

REMARKS/ARGUMENTS

Claims 1-62 are pending in the present application. The Examiner has rejected claims 1-62. Applicant respectfully requests reconsideration of pending claims 1-62.

The Examiner alleges "The Applicant has not specifically pointed out how the language of the claims patentably distinguishes them from the references." The Examiner cites 37 CFR 1.111.

Applicant notes 37 CFR 1.111 states as follows:

Sec. 1.111 Reply by applicant or patent owner to a non-final Office action.

(a)(1) If the Office action after the first examination (Sec. 1.104) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment. See Sec. 1.135 and 1.136 for time for reply to avoid abandonment.

(2) Supplemental replies.

(i) A reply that is supplemental to a reply that is in compliance with Sec. 1.111(b) will not be entered as a matter of right except as provided in paragraph (a)(2)(ii) of this section. The Office may enter a supplemental reply if the supplemental reply is clearly limited to:

(A) Cancellation of a claim(s);

(B) Adoption of the examiner suggestion(s);

(C) Placement of the application in condition for allowance;

(D) Reply to an Office requirement made after the first reply was filed;

(E) Correction of informalities (e.g., typographical errors); or

(F) Simplification of issues for appeal.

(ii) A supplemental reply will be entered if the supplemental reply is filed within the period during which action by the Office is suspended under Sec. 1.103(a) or (c).

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action.

A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

(c) In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

Pursuant to 37 CFR 1.111(a)(1), Applicant submits Applicant has replied and requested reconsideration or further examination, with or without amendment. Specifically, Applicant filed a reply on 10/29/2007, as the Examiner acknowledges. Applicant's reply included a request for reconsideration of pending claims 1-62. Applicant's reply amended claims 1, 11, 20, 32, 41, 42, 43, and 52.

Pursuant to 37 CFR 1.111(b), Applicant submits Applicant replied to the Office action. Applicant submits Applicant's reply was reduced to a writing which distinctly and specifically pointed out the supposed errors in the Examiner's action and replied to every ground of objection and rejection in the prior Office action. The Examiner brought a rejection under 35 USC 102(e) against claims 1-6, 8-25, and 27-62. Applicant submits Applicant's reply replied to the 35 USC 102(e) rejection for all of claims 1-6, 8-25, and 27-62. The Examiner brought a rejection under 35 USC 103(a) against claims 7 and 26. Applicant submits Applicant's reply replied to the 35 USC 103(a) rejection for both claims 7 and 26. Applicant submits Applicant's reply specifically pointed out the supposed errors in the Examiner's action. For example, Applicant notes Applicant stated, "Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of 'a positive feedback message,' that the 'positive feedback message' indicates '...that such node is ready to receive data transmissions from the source node 12....' Accordingly, Applicant submits Fedyk's 'feedback messages,' whether 'positive' or 'negative,' appear to relate to a readiness to receive data transmissions, not to 'control plane congestion.'"

Applicant submits Applicant's reply appears throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action, as the Examiner acknowledges. Applicant submits Applicant's reply presented arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. For example, Applicant notes Applicant stated, "Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of 'a positive feedback message,' that the 'positive feedback message' indicates '...that such node is ready to receive data transmissions from the source node 12....' Accordingly, Applicant

submits Fedyk's 'feedback messages,' whether 'positive' or 'negative,' appear to relate to a readiness to receive data transmissions, not to 'control plane congestion.'"

Pursuant to 37 CFR 1.111(c), Applicant submits Applicant's reply, in amending in reply to a rejection of claims in an application or patent under reexamination, clearly points out the patentable novelty which Applicant thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. For example, Applicant notes Applicant quoted specific language found in the claims, which Applicant alleged was not disclosed in the cited reference. The applicant or patent owner must also show how the amendments avoid such references or objections. For example, Applicant notes the specific language found in the claims, which Applicant quoted and alleged was not disclosed in the cited reference, pertains to the amendment.

Moreover, Applicant notes Applicant alleged the Examiner has failed to make a *prima facie* showing of anticipation with respect to rejected claims. Applicant submits such an allegation constitutes a fully responsive reply to rejections for which no *prima facie* showing of anticipation has been made. Pursuant to MPEP § 2131, Applicant submits a reference must teach every element of the claim to anticipate a claim. As Applicant submits Applicant's reply pointed out aspects of the teachings of the cited reference that Applicant submits fail to satisfy the requirements set forth in MPEP § 2131, Applicant submits Applicant's allegation that the Examiner failed to make a *prima facie* showing of anticipation with respect to rejected claims was a fully responsive reply and the burden falls on the Examiner either to make a *prima facie* showing with respect to purportedly rejected claims or to allow such claims.

While the Examiner alleges "The applicant has not specifically pointed out how the language of the claims patentably distinguishes them from the references," Applicant notes the Examiner further "implores the applicant to explain how the claims are to be interpreted in light of the applicant's specification rather than just making allegations that the claim limitations are patentable over the references with no explanation," with the Examiner noting that such request is "not required by 37 CFR 1.111." Applicant notes the Examiner stated in the Office action dated 08/14/2006 as follows:

At various points during prosecution of this application, the applicant has argued that the prior art does not teach the concepts of a "control plane", a "routing plane", and a "signal plane". However, the applicant's specification never defines these terms and they are not commonly used in the art as a search of U.S. patents for the terms "control plane", "routing plane", and "signal plane" used together only turned up documents published by the applicant. If the applicant wishes to persist in arguing that the prior does not teach these terms, it is requested by the Examiner that the applicant specifically point out how these terms are to be interpreted in light of applicant's specification or

provide some evidence that their meaning was well known in the art at the time of the applicant's invention, in order to further prosecution. Otherwise, the examiner has no choice other than to interpret the claims broadly.

While Applicant attempted to respond to the Examiner's concerns in Applicant's response to such Office action, the Examiner stated in the final Office action dated 04/27/2007, as follows:

The examiner, however, can see no attempt in the applicant's arguments to clarify how such terms are to be interpreted. Instead, applicant's arguments allege that the reference does not teach the claim language without explaining why. The rejections based on the cited references would not have been set forth if they were not believed to have taught the claim language so merely stating that the claim are not taught or that the interpretation of the claims is improper without explaining how the claims are supposed to be interpreted does nothing to further prosecution.

With respect to the argument for claim 20, given that the applicant never bothers to define control plane congestion so the interpretation provided in the rejection is proper.

With respect to the rest of applicant's arguments, they feature nothing more than unsupported allegations. Without any elaboration or explanation provided by the applicant, it is unclear how the applicant's claims are supposed to differ from the cited references. The Examiner maintains the same position on the patentability of the claims as illustrated in the last office action.

Applicant notes Applicant filed, in response to the final Office action, amendments which Applicant expected to abate the Examiner's stated concerns. For example, Applicant notes Applicant amended claim 1 to include "wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in a control plane, said control plane carrying a connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets for connections within the signaling network." As another example, Applicant notes Applicant amended claim 11 to include "wherein said control plane congestion pertains to control plane congestion, wherein control plane congestion is not data plane congestion, wherein said control plane congestion occurs in a control plane, said control plane carrying a first connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets for connections within the communication network." As yet another example, Applicant notes Applicant amended claim 20 to include "wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in a control plane, said control plane carrying a connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets." Applicant further notes amendments to claims 32, 41, 42, 43, and 52. Accordingly, Applicant notes Applicant amended every pending independent claim.

Applicant submits Applicant's amendments to the independent claims are supported by the specification, for example, on page 1, lines 23-28; Figure 3; page 2, line 23, through page 3, line 4;

page 4, lines 1-20; page 5, line 8, through page 6, line 2; page 6, lines 13-19; page 7, line 11, through page 10, line 8; page 10, line 25, through page 12, line 30; page 13, lines 12-28; and page 14, lines 9-28. Thus, Applicant submits no new matter has been added. Moreover, Applicant submits the recitations added to the independent claims and the cited support for such recitations as found in the specification substantially address the Examiner's request the Applicant "...explain how the claims are to be interpreted in light of applicant's specification...." Moreover, Applicant submits Applicant didn't simply make "allegations that the claim limitations are patentable over the references with no explanation," but rather "specifically pointed out how the language of the claims patentably distinguishes them from the references" in Applicant's response to the final Office action. For example, Applicant noted "Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation." While the Examiner had previously stated "If the applicant wishes to persist in arguing that the prior does not teach these terms, it is requested by the Examiner that the applicant specifically point out how these terms are to be interpreted in light of applicant's specification or provide some evidence that their meaning was well known in the art at the time of the applicant's invention, in order to further prosecution. Otherwise, the examiner has no choice other than to interpret the claims broadly," Applicant submits Applicant's amendments to the independent claims, based on support found in the specification, served to "specifically point out how these terms are to be interpreted in light of applicant's specification." Thus, Applicant submits arguments with respect to the Fedyk reference can be understood in that context, which Applicant submits patentably distinguishes the language of the claims, as amended, from the cited reference. Thus, Applicant submits Applicant's response complies with 37 CFR 1.111.

The Examiner has rejected claims 1-6, 8-25 and 27-62 under 35 U.S.C. § 102(e) as allegedly being anticipated by Fedyk et al. (U.S. Patent Number 6,560,654). Applicant respectfully disagrees.

Regarding claim 20, Applicant has amended claim 20. Applicant reiterates Applicant's previously submitted arguments. For example, Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant

submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 20 is in condition for allowance.

Regarding claim 21, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 21. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via a routing plane within the signaling network." The Examiner states, "(col. 5, lines 13-30 and Figure 1, the devices in Figure 1 are considered a routing plane and the network is a signaling network)." However, Applicant submits such characterization by the Examiner appears to be inconsistent with the Examiner's characterization of the alleged teachings of Fedyk with regard to claim 23, where the Examiner states, "(col. 4, lines 9-37, the network in Figure 1 is considered a signaling plane)." Thus, Applicant submits claim 21 is in condition for allowance.

Regarding claim 22, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 22. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via the routing plane such that the congestion notification is provided to neighboring network elements proximal to the network element." Applicant notes Fedyk states, in col. 5, lines 52-55, "In preferred embodiments, however, only the source node database is updated and thus, is out of synchronization with the topology databases in the other nodes in the network 10." Thus, Applicant submits claim 22 is in condition for allowance.

Regarding claim 23, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 23. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via a signaling plane within the signaling network." The Examiner states, "(col. 4, lines 9-37, the network in Figure 1 is considered a signaling plane)." However, Applicant submits such characterization by the Examiner appears to be inconsistent with the Examiner's characterization of the alleged teachings of Fedyk with regard to claim 21, where the Examiner states, "(col. 5, lines 13-30 and Figure 1, the devices in Figure 1 are

considered a routing plane and the network is a signaling network)." Thus, Applicant submits claim 23 is in condition for allowance.

Regarding claim 24, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 24. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification in response to a received connection setup message generated by a source node in the network, wherein the at least one additional node includes the source node." Applicant has submitted arguments for the allowance of claim 20, from which claim 24 depends. Thus, Applicant submits claim 24 is also in condition for allowance.

Regarding claim 25, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 25. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via a signaling plane within the signaling network, wherein the congestion notification is provided to each network element along a path traversed by the connection setup message." Applicant notes Fedyk states, in col. 5, lines 18-28, "As discussed in greater detail with reference to FIG. 4, an intervening node 16 that determines that its link 18 does not satisfy the parameters in the setup message responsively generates a point-to-point feedback message to the source node 12. The feedback message includes data identifying a node, its link 18, and data indicating the unsatisfactory condition not met by such intervening node's link 18. It should be noted that the term "point-to-point" is used herein in the conventional manner to indicate that a message is transmitted from one node to another node and thus, is not a broadcast message." Thus, Applicant submits claim 25 is in condition for allowance.

Regarding claim 27, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 27. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the signaling network is included in at least one of a packet-based communication network and a cell-based communication network." Applicant has presented arguments for the allowability of claim 20, from which claim 27 depends. Thus, Applicant submits claim 27 is also in condition for allowance.

Regarding claim 28, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 28. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the signaling network is a source routed control network." Applicant has presented arguments for the allowability of claim 20, from which claim 28 depends. Thus, Applicant submits claim 28 is also in condition for allowance.

Regarding claim 29, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 29. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the signaling network is included in an ATM network utilizing a Private Node Network Interface (PNNI) routing and signaling protocol." Applicant has presented arguments for the allowability of claim 20, from which claim 29 depends. Thus, Applicant submits claim 29 is also in condition for allowance.

Regarding claims 1-6 and 8-10, Applicant has amended claim 1. To whatever extent the Examiner alleges that claims 1-6 and 8-10 "feature the same limitations as claims 20-25 and 27-29 and are rejected for the same reasons as claims 20-25 and 27-29," Applicant reiterates Applicant's arguments for the allowability of claims 20-25 and 27-29. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claims 1-6 and 8-10 are in condition for allowance.

Regarding claim 30, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 30. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein utilization of the congestion notification by the at least one additional network element further comprises at least one of: updating routing tables, generating a congestion database, propagating the congestion notification to additional elements in the network, and compiling statistics reflecting network performance." Applicant notes Fedyk states, in col. 5, line 51, "...update the database in the data storage 26..." and, in col. 5, lines 52-55, "In preferred embodiments, however, only the source node database is updated and thus, is out of synchronization with the topology databases in the other nodes in the network 10." Applicant does not see teaching in the cited portions of the cited reference of "the database in data storage 26" or the "source node database" being a "congestion database." Thus, Applicant submits claim 30 is in condition for allowance.

Regarding claim 31, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 31. As one example, Applicant submits the cited portions of the cited

reference fail to anticipate "...wherein the congestion notification includes a congestion level and wherein utilization of the congestion notification further comprises reducing control traffic to the network element at which the control plane congestion has been detected, wherein an amount of reduction in control traffic to the network element is based on the congestion level." Applicant notes Fedyk states, in col. 5, lines 34-36, "...indicating that a link 18 in the selected path does not meet the parameters in the setup message...." Accordingly, it appears that Fedyk does not teach "...wherein the congestion notification includes a congestion level...." Thus, Applicant submits claim 31 is in condition for allowance.

Regarding claim 32, Applicant has amended claim 32. Applicant reiterates Applicant's previously submitted arguments. For example, Applicant submits the cited portions of the cited reference fail to disclose "...wherein the network parameters include communication network topology information and congestion information." Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 32 is in condition for allowance.

Regarding claim 33, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 33. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "receiving an indication of control plane congestion at a congestion point along the first routing path." As another example, Applicant submits the cited portions of the cited reference fail to anticipate "determining a second routing path for the connection using the network parameters and the indication of control plane congestion." While the Examiner cites "(col. 5, lines 13-60, the feedback message)" as allegedly teaching "an indication of control plane congestion at a congestion point along the first routing path," Applicant respectfully disagrees. While Fedyk states in col. 5, lines 11 and 12, "In preferred embodiments, the setup message is a control plane message," Applicant does not see Fedyk teaching the "feedback message" as being "...an indication of control plane congestion at a congestion point along the first routing path...." Rather, Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Thus, Applicant submits claim 33 is in condition for allowance.

Regarding claim 34, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 34. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "wherein the processing module stores the network parameters in a table, and wherein memory stores operating instructions that, when executed, cause the processing module to add congestion information included in the indication of control plane congestion to the network parameters stored in the table." Applicant notes Fedyk states, in col. 5, lines 45-49, "Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data." However, Applicant does not see teaching in the cited portion of the cited reference of "...add congestion information included in the indication of control plane congestion to the network parameters stored in the table." Thus, Applicant submits claim 34 is in condition for allowance.

Regarding claim 35, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 35. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to remove the congestion information from the table after a predetermined time period." While Fedyk states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant does not see teaching in the cited portion of the cited reference of "...remove the congestion information from the table after a predetermined time period." Thus, Applicant submits claim 35 is in condition for allowance.

Regarding claim 36, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 36. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion information includes a level of congestion, and wherein the predetermined time period is based on the level of congestion." While Fedyk states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant does not see teaching in the cited portion of the cited reference of "...wherein the congestion information includes a level of congestion, and wherein the predetermined time period is based on the level of congestion." Thus, Applicant submits claim 36 is in condition for allowance.

Regarding claim 37, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 37. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to perform an additional function of relaying the indication of control plane congestion to at least one additional node in the communication network." Applicant does not see teaching as to the above-referenced feature in col. 6, lines 4-22, as cited by the Examiner. Thus, Applicant submits claim 37 is in condition for allowance.

Regarding claim 38, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 38. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to store congestion information included in the indication of control plane congestion in a congestion database." While the Examiner cites col. 6, lines 4-22, of the cited reference, Applicant can find no teaching of "...to store congestion information included in the indication of control plane congestion in a congestion database" within the cited portion of the cited reference. Thus, Applicant submits claim 38 is in condition for allowance.

Regarding claim 39, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 39. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the indication of control plane congestion is received by the processing module via a routing plane." Applicant has discussed the apparent inconsistency in the Examiner's characterization of the teachings of the cited reference with respect to claims 21 and 23 above. Applicant submits such inconsistency appears not to have been rectified with respect to the rejection of claims 39 and 40. Thus, Applicant submits claim 39 is in condition for allowance.

Regarding claim 40, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 40. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "wherein the indication of control plane congestion is received by the processing module via a signaling plane." Applicant has discussed the apparent inconsistency in the Examiner's characterization of the teachings of the cited reference with respect to claims 21 and 23 above. Applicant submits such inconsistency appears not to have been rectified with respect to the rejection of claims 39 and 40. Thus, Applicant submits claim 40 is in condition for allowance.

Regarding claims 11-19, Applicant has amended claim 11. To whatever extent the Examiner alleges that claims 11-19 "feature the same limitations as claims 32-40 and are rejected for the same reasons as claims 32-40," Applicant reiterates Applicant's arguments for the allowability of claims 32-40. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claims 11-19 are in condition for allowance.

Regarding claim 41, Applicant has amended claim 41. Applicant reiterates Applicant's previously submitted arguments. Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 41 is in condition for allowance.

Regarding claim 42, Applicant has amended claim 42. Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 42 is in condition for allowance.

Regarding claim 52, Applicant has amended claim 52. Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 52 is in condition for allowance.

Regarding claim 53, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 53. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the at least one additional network element is a source node,

wherein the providing the congestion notification occurs in response to a received connection setup message generated by the source node." Applicant has presented arguments for the allowability of claim 52, from which claim 53 depends. Thus, Applicant submits claim 53 is also in condition for allowance.

Regarding claim 54, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 54. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion notification is provided to a source node and to the at least one additional network element in the signaling network in response to a received connection setup message generated by the source node, wherein the at least one additional network element utilizes the congestion notification for reducing control traffic to the network element at which the control plane congestion has been detected." While the Examiner states, "By forwarding the feedback message, each node is utilizing the congestion to reduce control traffic." Applicant respectfully disagrees. Applicant notes Fedyk states, in col. 5, lines 18-28, "As discussed in greater detail with reference to FIG. 4, an intervening node 16 that determines that its link 18 does not satisfy the parameters in the setup message responsively generates a point-to-point feedback message to the source node 12. The feedback message includes data identifying a node, its link 18, and data indicating the unsatisfactory condition not met by such intervening node's link 18. It should be noted that the term "point-to-point" is used herein in the conventional manner to indicate that a message is transmitted from one node to another node and thus, is not a broadcast message." Thus, Applicant submits claim 54 is in condition for allowance.

Regarding claim 55, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 55. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the at least one additional network element comprises a network element along a path traversed by the connection setup message." Applicant respectfully disagrees. Applicant notes Fedyk states, in col. 5, lines 18-28, "As discussed in greater detail with reference to FIG. 4, an intervening node 16 that determines that its link 18 does not satisfy the parameters in the setup message responsively generates a point-to-point feedback message to the source node 12. The feedback message includes data identifying a node, its link 18, and data indicating the unsatisfactory condition not met by such intervening node's link 18. It should be noted that the term "point-to-point" is used herein in the conventional manner to indicate that a message is transmitted from one node to

another node and thus, is not a broadcast message." Thus, Applicant submits claim 55 is in condition for allowance.

Regarding claim 56, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 56. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion notification comprises a congestion level, wherein the scaling back of traffic is based on the congestion level." The Examiner states that claim 56 "...is rejected for the same reasons as pointed out in the rejection of claim 41." Applicant has presented arguments for the allowability of claim 41. To whatever extent the Examiner alleges that claims 56 "is rejected for the same reasons pointed out in the rejection of claim 41," Applicant reiterates Applicant's arguments for the allowability of claim 41. Thus, Applicant submits claim 56 is in condition for allowance.

Regarding claim 57, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 57. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "maintaining the congestion information for a predetermined time period." As another example, Applicant submits the cited portions of the cited reference fail to anticipate "removing the congestion information after the predetermined time period." While Fedyk states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant does not see teaching in the cited portion of the cited reference of "...maintaining the congestion information for a predetermined time period." Thus, Applicant submits claim 57 is in condition for allowance.

Regarding claim 58, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 58. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a routing table." Applicant notes Fedyk states, in col. 5, lines 45-49, "Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data." However, Applicant does not see teaching in the cited portion of the cited reference of "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a routing table." Thus, Applicant submits claim 58 is in condition for allowance.

Regarding claim 59, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 59. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a topology database." Applicant notes Fedyk states, in col. 5, lines 45-49, "Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data." However, Applicant does not see teaching in the cited portion of the cited reference of "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a topology database." Thus, Applicant submits claim 59 is in condition for allowance.

Regarding claim 60, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 60. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...prioritizing traffic such that traffic of a priority is attempted to be routed through the network element at which the control plane congestion has been detected after the congestion notification has been provided." While the Examiner cites "col. 4, line 61-col. 5, line 12 and col. 6, lines 18-29...", Applicant submits that while Fedyk mentions "priority" in col. 4, line 61-col. 5, line 12 and states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant submits such separate teachings do not appear to teach "...prioritizing traffic such that traffic of a priority is attempted to be routed through the network element at which the control plane congestion has been detected after the congestion notification has been provided." Rather, col. 5, lines 6 and 7 of Fedyk state, "...to ensure that such data is reliably transmitted to the destination node 14." Applicant sees no teaching in Fedyk as to how transmitting the data upon expiration of a time interval "ensures that such data is reliably transmitted to the destination node 14." Thus, Applicant submits claim 60 is in condition for allowance.

Regarding claim 61, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 61. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the traffic of a priority further comprises traffic of a high priority." Applicant has submitted arguments for the allowability of claim 60, from which claim 61 depends. Thus, Applicant submits claim 61 is in condition for allowance.

Regarding claim 62, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 62. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "wherein the traffic of a priority further comprises traffic of a lower priority." Applicant has submitted arguments for the allowability of claim 60, from which claim 62 depends. Thus, Applicant submits claim 62 is in condition for allowance.

Regarding claims 43-51, Applicant has amended claim 43. To whatever extent the Examiner alleges that claims 43-51 "feature a method corresponding to that done by the congestion notification processor of claims 52-62 and are rejected for the same reasoning," Applicant reiterates Applicant's arguments for the allowability of claims 52-62. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claims 43-51 are in condition for allowance.

The Examiner has rejected claims 7 and 26 as allegedly being unpatentable over Fedyk et al. (U.S. Patent No. 6,560,654) in view of Nishihara (U.S. Patent No. 6, 424,620. Applicant respectfully disagrees.

Regarding Claims 7 and 26, the Examiner acknowledges "...Fedyk does not explicitly teach distinguishing between node congestion and link congestion." However, the Examiner cites "(col. 17, lines 41-39, the BRM packet indicates whether congestion is caused by inside or outside blocking)." Applicant presumes the Examiner is referring to col. 17, lines 41-49, of the Nishihara reference, as line 49 is greater than line 41 and lines 41-49 define a paragraph. Applicant respectfully disagrees. The Examiner states "It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the applicant's invention to combine the teachings of Fedyk regarding the detection of control plane congestion with the teachings of Nishihara regarding detecting congestion type because differing congestion types can be handled more efficiently by taking corresponding actions (Nishihara, col. 17, lines 50-67). Applicant submits the Nishihara reference teaches away from such combination and such alleged motivation to combine. Applicant notes that while the abstract of Nishihara states "...a congestion detecting unit for detecting congestion caused by inside blocking from the detection result of the inside node congestion and the congestion caused by the outside blocking...", the abstract of Nishihara then concludes "...a transfer channel retrieval unit for retrieving a transfer channel possible to avoid a relay node having the inside node congestion detected when detecting the congestion caused by the inside blocking." Thus, Applicant submits Nishihara appears to teach "...to

avoid a relay node having the inside node congestion detected..., " not "...differing congestion types can be handled more efficiently by taking corresponding actions."

Moreover, Applicant submits the Examiner does not appear to have identified any teaching as to "inside blocking" and "outside blocking" of Nishihara relating to "node congestion" and "link congestion." Thus, Applicant submits claims 7 and 26 are in condition for allowance.

Applicant notes Applicant filed a request for continued examination with Applicant's reply of 10/29/2007 to the final Office action. Accordingly, Applicant respectfully requests the foregoing reply be considered during continued examination.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date

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